

trator determines in writing to be necessary to conduct any test of any of the procedures described in subsection (e).

“(2) The provisions of law referred to in paragraph (1) are as follows:

“(A) The following provisions of title 10, United States Code:

“(i) Section 2304.

“(ii) Section 2305.

“(iii) Section 2319.

“(B) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

“(C) The following provisions of the Revised Statutes:

“(i) Section 3709 (41 U.S.C. 5).

“(ii) Section 3710 (41 U.S.C. 8).

“(iii) Section 3735 (41 U.S.C. 13).

“(D) The following provisions of the Federal Property and Administrative Services Act of 1949:

“(i) Section 303 (41 U.S.C. 253).

“(ii) Section 303A (41 U.S.C. 253a).

“(iii) Section 303B (41 U.S.C. 253b).

“(iv) Section 303C (41 U.S.C. 253c).

“(v) Section 310 (41 U.S.C. 260).

“(E) The following provisions of the Office of Federal Procurement Policy Act:

“(i) Section 4(6) (41 U.S.C. 403(6)).

“(ii) Section 18 (41 U.S.C. 416).

“(3) If the Administrator determines that the conduct of a test requires the waiver of a law not listed in paragraph (2) or requires approval of an estimated dollar amount not permitted under subsection (c)(4), the Administrator may propose legislation to authorize the waiver or grant the approval. Before proposing such legislation, the Administrator may provide and publish a test plan as described in subsection (g).

“(i) REPORT.—Not later than 6 months after completion of a test conducted under subsection (a), the Comptroller General shall submit to Congress a report for the test setting forth in detail the results of the test, including such recommendations as the Comptroller General considers appropriate.

“(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on January 1, 1997, and shall expire on January 1, 2001. A contract entered into before such authority expires in an agency pursuant to a test shall remain in effect, in accordance with the terms of the contract, the notwithstanding of expiration the authority to conduct the test under this section.

“(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the tests conducted pursuant to subsection (a).”

#### § 414. Executive agency responsibilities

To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with applicable laws, Government-wide policies and regulations, and good business practices—

(1) increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;

(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive

agency, including placing the procurement function at a sufficiently high level in the executive agency to provide—

(A) direct access to the head of the major organizational element of the executive agency served; and

(B) comparative equality with organizational counterparts;

(3) designate a senior procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.

(Pub. L. 93-400, §16, as added Pub. L. 98-191, §7, Dec. 1, 1983, 97 Stat. 1330; amended Pub. L. 98-369, div. B, title VII, §2732(b)(2), July 18, 1984, 98 Stat. 1199.)

#### AMENDMENTS

1984—Par. (1). Pub. L. 98-369 substituted “increase the use of full and open competition in the procurement of property or services by the executive agency by establishing policies, procedures, and practices that assure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Government's requirements (including performance and delivery schedules) at the lowest reasonable cost considering the nature of the property or service procured;” for “increase the use of effective competition in procurement by the executive agency;”.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252c, 253, 418, 421 of this title; title 10 sections 133, 2225, 2302c, 2304, 2435; title 15 section 637; title 49 section 40110; title 50 section 2402.

#### § 414a. Personnel evaluation

The head of each executive agency that is subject to the provisions of title III of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.] shall ensure, with respect to the employees of that agency whose primary duties and responsibilities pertain to the award of contracts subject to the provisions of this Act, that the performance appraisal system applicable to such employees affords appropriate recognition to, among other factors, efforts—

(1) to increase competition and achieve cost savings through the elimination of procedures that unnecessarily inhibit full and open competition;

(2) to further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 and the Defense Procurement Reform Act of 1984; and

(3) to further such other objectives and purposes of the Federal acquisition system as may be authorized by law.

(Pub. L. 98-577, title V, §502, Oct. 30, 1984, 98 Stat. 3085.)

#### REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in provision preced-

ing par. (1), is act June 30, 1949, ch. 288, 63 Stat. 393, as amended. Title III of the Federal Property and Administrative Services Act of 1949 is classified generally to subchapter IV (§251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

This Act and the Small Business and Federal Procurement Competition Enhancement Act of 1984, referred to in provision preceding par. (1) and par. (2), is Pub. L. 98-577, Oct. 30, 1984, 98 Stat. 3066. For complete classification of this Act to the Code, see Short Title note set out under section 251 of this title and Tables.

The Defense Procurement Reform Act of 1984, referred to in par. (2), is Pub. L. 98-525, title XII, Oct. 19, 1984, 98 Stat. 2588. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 2302 of Title 10, Armed Forces, and Tables.

#### CODIFICATION

Section was enacted as part of the Small Business and Federal Procurement Competition Enhancement Act of 1984, and not as part of the Office of Federal Procurement Policy Act which comprises this chapter.

#### **§ 415. Repealed. Pub. L. 103-355, title VI, § 6003, Oct. 13, 1994, 108 Stat. 3364**

Section, Pub. L. 93-400, § 17, as added Pub. L. 98-191, § 7, Dec. 1, 1983, 97 Stat. 1330, directed Administrator to conduct studies and issue report by Apr. 1, 1984, to Congressional committees on extent of competition in award of subcontracts by Federal prime contractors.

#### EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

#### **§ 416. Procurement notice**

##### **(a) Covered executive agency activities; publication of notice; time limitations**

(1) Except as provided in subsection (c) of this section—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000; or

(ii) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement,

shall publish a notice of solicitation described in subsection (b) of this section;

(B) an executive agency intending to solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, but not to exceed \$25,000, shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (b) of this section; and

(C) an executive agency awarding a contract for property or services for a price exceeding \$25,000, or placing an order referred to in clause (A)(ii) exceeding \$25,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meets the requirements for accessibility under paragraph (7); or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) in the case of a contract or order expected to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(4) An executive agency intending to solicit offers for a contract for which a notice of solicitation is required to be posted under paragraph (1)(B) shall ensure that contracting officers consider each responsive offer timely received from an offeror.

(5) An executive agency shall establish a deadline for the submission of all bids or proposals in response to a solicitation with respect to which no such deadline is provided by statute. Each deadline for the submission of offers shall afford potential offerors a reasonable opportunity to respond.

(6) The Administrator shall prescribe regulations defining limited circumstances in which flexible deadlines can be used under paragraph (3) for the issuance of solicitations and the submission of bids or proposals for the procurement of commercial items.

(7) A publication of a notice of solicitation by electronic means meets the requirements for accessibility under this paragraph if the notice is electronically accessible in a form that allows convenient and universal user access through the single Government-wide point of entry designated in the Federal Acquisition Regulation.

##### **(b) Contents of notice**

Each notice of solicitation required by subparagraph (A) or (B) of subsection (a)(1) shall include—

(1) an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a